

31A-37a-201 Certificate of authority requirements.

- (1) A person may not reinsure the risks of a ceding insurer unless the person has a certificate of authority under this chapter as a special purpose financial captive insurance company.
- (2) To apply for a certificate of authority under this chapter as a special purpose financial captive insurance company, a special purpose financial captive insurance company shall submit an application for the certificate of authority that, in addition to complying with Chapter 37, Captive Insurance Companies Act, complies with the following:
 - (a) A special purpose financial captive insurance company shall submit to the commissioner a plan of operation that includes:
 - (i) a complete description of:
 - (A) a significant transaction including:
 - (I) reinsurance;
 - (II) a reinsurance security arrangement;
 - (III) an insurance securitization; or
 - (IV) a transaction or arrangement related to a transaction described in Subsections (2)(a)(i)(A)(I) through (III);
 - (B) to the extent not included in Subsection (2)(a)(i)(A), a party other than the special purpose financial captive insurance company and the ceding insurer that is involved in the issuance of a special purpose financial captive insurance company security; and
 - (C) a pledge, hypothecation, or grant of a security interest in:
 - (I) an asset of the special purpose financial captive insurance company; or
 - (II) stock or a limited liability company interest in the special purpose financial captive insurance company;
 - (ii) the source and form of the special purpose financial captive insurance company's capital and surplus;
 - (iii) the proposed investment policy of the special purpose financial captive insurance company;
 - (iv) a description of an underwriting, reporting, and claims payment method by which losses covered by a reinsurance contract are reported, accounted for, and settled;
 - (v) pro forma balance sheets and income statements illustrating one or more adverse case scenarios, as determined under criteria required by the commissioner, for the performance of the special purpose financial captive insurance company under a reinsurance contract; and
 - (vi) the proposed rate and method for discounting reserves, if the special purpose financial captive insurance company is requesting authority to discount its reserves.
 - (b) The special purpose financial captive insurance company shall submit an affidavit:
 - (i) of the following of the special purpose financial captive insurance company:
 - (A) president;
 - (B) vice president;
 - (C) treasurer; or
 - (D) chief financial officer; and
 - (ii) that includes the following statements, to the best of knowledge and belief of the person submitting the affidavit after reasonable inquiry:
 - (A) the proposed organization and operation of the special purpose financial captive insurance company complies with this chapter and the applicable provisions of Chapter 37, Captive Insurance Companies Act;
 - (B) the special purpose financial captive insurance company's investment policy reflects and takes into account:
 - (I) the liquidity of assets; and

- (II) the reasonable preservation, administration, and management of those assets with respect to the risks associated with:
 - (Aa) a reinsurance contract; and
 - (Bb) an insurance securitization transaction; and
 - (C) the following comply with this chapter:
 - (I) a reinsurance contract; and
 - (II) an arrangement for securing an obligation of the special purpose financial captive insurance company under the reinsurance contract, including an agreement or other documentation to implement the arrangement.
 - (c) A special purpose financial captive insurance company shall submit to the commissioner:
 - (i) a copy of an agreement or documentation described in Subsection (2)(b), unless otherwise approved by the commissioner; and
 - (ii) a statement or document required by the commissioner to evaluate the special purpose financial captive insurance company's application for a certificate of authority.
 - (d)
 - (i) Subject to Subsection (2)(d)(ii), a special purpose financial captive insurance company shall submit with the application an opinion of a licensed attorney, in a form acceptable to the commissioner, that:
 - (A) the offer and sale of a special purpose financial captive insurance company security complies with:
 - (I) the registration requirements of federal securities laws; or
 - (II) the exemptions from or exceptions to a requirement of the federal securities laws; and
 - (B) the offer and sale of a security by the special purpose financial captive insurance company complies with:
 - (I) the registration requirements of this state's securities laws; or
 - (II) the exemptions from or exceptions to a requirement of this state's securities laws.
 - (ii) A special purpose financial captive insurance company is not required to submit an opinion described in Subsection (2)(d)(i) with an application if the special purpose financial captive insurance company includes a specific statement in its plan of operation that the opinion described in Subsection (2)(d)(i) will be provided to the commissioner before the offer or sale of a special purpose financial captive insurance company security.
- (3)
- (a) The commissioner may issue a certificate of authority to a special purpose financial captive insurance company that complies with Subsection (2) authorizing the special purpose financial captive insurance company to transact reinsurance business as a special purpose financial captive insurance company in this state if the commissioner finds that:
 - (i) the proposed plan of operation provides for a reasonable and expected successful operation;
 - (ii) the terms of the reinsurance contract or related transaction comply with this chapter;
 - (iii) the proposed plan of operation is not hazardous to a ceding insurer; and
 - (iv) subject to Subsection (3)(b), the insurance regulator of the state of domicile of a ceding insurer has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that the regulator of the state has approved or has not disapproved the transaction.
 - (b) Notwithstanding Subsection (3)(a)(iv), the commissioner may issue a certificate of authority to a special purpose financial captive insurance company if the insurance regulator of the state of domicile of a ceding insurer does not respond with respect to all or a part of the transaction.
 - (c)

- (i) A certificate of authority issued under this section is valid through the June 30 after the day on which the certificate of authority is issued.
- (ii) A special purpose financial captive insurance company may renew its certificate of authority annually by, before the certificate of authority expires:
 - (A) submitting the affidavit required by Subsection (2); and
 - (B) paying a renewal fee.
- (4) In conjunction with issuing a certificate of authority to a special purpose financial captive insurance company, the commissioner may issue an order that includes a provision, term, or condition regarding the organization, issuance of a certificate of authority, and operation of the special purpose financial captive insurance company that:
 - (a) the commissioner considers appropriate; and
 - (b) is not inconsistent with this chapter and Chapter 37, Captive Insurance Companies Act.

Enacted by Chapter 302, 2008 General Session